

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ICONIX INC.,

Plaintiff,

v.

LANCE TOKUDA, JIA SHEN, NETPICKLE,  
INC.,

Defendants.

Case No. 4:06-cv-02201-SBA

**ORDER GRANTING IN PART  
AND DENYING IN PART  
DEFENDANTS' MOTION TO  
DISMISS PLAINTIFF'S SECOND  
AMENDED COMPLAINT AND  
DENYING PLAINTIFF'S  
OBJECTIONS TO REPLY BRIEF  
IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS**

This matter comes before the Court on Defendants Lance Tokuda, Jia Shen, and netPickle, Inc.'s Motion to Dismiss Second Amended Complaint, filed on September 19, 2006, and Plaintiff Iconix, Inc.'s Objections to Reply Brief in Support of Defendants' Motion to Dismiss, filed on October 18, 2006. Defendants' Motion to Dismiss seeks dismissal of the second, sixth, seventh, eighth, ninth and tenth claims for relief in Iconix's Second Amended Complaint, and also seeks to dismiss the third claim for relief against Defendants Shen and netPickle only.

Having carefully considered the briefs of the parties and the arguments heard at the hearing held on October 31, 2006, the Court issues the following orders:

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss the third, sixth, seventh, ninth, and tenth claims for relief pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief may be granted, is DENIED.

1 IT IS HEREBY ORDERED that Defendants' Motion to Dismiss the second claim for  
2 relief pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which  
3 relief may be granted, is GRANTED WITHOUT LEAVE TO AMEND.

4 IT IS HEREBY ORDERED that Defendants' Motion to Dismiss the eighth claim for  
5 relief (for a constructive trust) pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to  
6 state a claim upon which relief may be granted is GRANTED without leave to amend; provided,  
7 however, that Iconix may, within 10 days of the date this Order is entered, file an amended  
8 complaint that includes any additional allegations that may be necessary to support Plaintiff's  
9 request for a constructive trust as a remedy, rather than as an independent claim for relief.

10 IT IS HEREBY ORDERED that, pursuant to Defendants' stipulation made in their  
11 moving papers and confirmed at the hearing on October 31, 2006, Defendants' sixth counterclaim  
12 for relief (for constructive trust) be dismissed without leave to amend; provided, however, that  
13 Defendants may, within 10 days of the date this Order is entered, file amended counterclaims that  
14 include any additional allegations that may be necessary to support Defendants' request for a  
15 constructive trust as a remedy, rather than as an independent claim for relief.

16 IT IS HEREBY ORDERED that Plaintiff's Objections to Reply Brief in Support of  
17 Defendants' Motion to Dismiss are DENIED.

18 IT IS SO ORDERED.

19 Dated: 11/9/06

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22 SAUNDRA BROWN ARMSTRONG  
23 United States District Judge  
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